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March 27, 2006

To: Mayor Michael D. Antonovich
Supervisor Gloria Molina
Supervisor Yvonne B. Burke
Supervisor Zev Yaroslavsky
Supervisor Don Knabe

From: David E. Janssen
Chief Administrative Officer

MOTION TO OPPOSE H.R. 4437 (SENSENBRENNER, R-WI), BORDER PROTECTION, ANTITERRORISM AND ILLEGAL IMMIGRATION CONTROL ACT (ITEM NO. 26-D SUPPLEMENTAL AGENDA OF MARCH 28, 2006)

Item No. 26-D on the March 28, 2006 Supplemental Agenda is a motion by Supervisor Molina that the Board oppose H.R. 4437 (Sensenbrenner, R-WI), the Border Protection, Antiterrorism, and Illegal Immigration Control Act, and send a five-signature letter opposing the bill to the Congress and President Bush.

H.R. 4437 is intended to strengthen enforcement of immigration laws, enhance border security, and curb illegal immigration. The House passed H.R. 4437 on December 16, 2006. **There are no existing County policies on most of the legislation although the bill has some provisions that are consistent with County policies and others that are not. Therefore, a position on H.R. 4437 is a matter for Board policy determination.**

No County Policy on Certain Provisions of H.R. 4437

There are no County policies on two of the bill's most controversial provisions, which would criminalize undocumented immigrants and those who help them. The bill makes it an aggravated felony for persons to be in the country in violation of immigration laws, including minor violations by legal immigrants, such as failing to report a change of

address within 10 days. As aggravated felons, they also would be barred from ever becoming legal immigrants. H.R. 4437 also expands the definition of alien smuggling to make it a crime to assist, encourage, direct, or induce a person to enter or remain in the country "knowing or in reckless disregard" of the fact that such person is not authorized to be in the country. Many faith-based, social service, and other organizations that help or counsel undocumented immigrants are concerned that such a broad definition would criminalize their work and also would make friends and family members of undocumented immigrants subject to prosecution as alien smugglers.

Other provisions in the bill on which there are no County policies include:

- A requirement that all aliens apprehended at ports of entry or along the border be detained until they are removed from the country or a final decision granting their legal status has been made;
- A requirement that a security fence be constructed along five portions of the Mexican border, including, in California, around Tecate and from Calexico to Arizona; and
- A requirement that all employers, within six years, verify whether employees are eligible to work in the U.S. using an automated employment eligibility verification system based on an existing pilot system. The County uses this system to determine the eligibility of its new hires.

Provisions in H.R. 4437 Where There is Existing Policy

H.R. 4437 has a number of provisions similar to those included in H.R. 2671, the Clear Law Enforcement Removal (CLEAR) Act of 2003, which were addressed by Board adopted policies on October 21, 2003. These provisions in the CLEAR Act, which was not enacted, included:

- Clarification that state and local law enforcement officers are fully authorized to investigate, apprehend, detain, or remove aliens in enforcing immigration laws;
- Authorization of funding, subject to available appropriations, for grants for equipment, facilities, and technology to assist state and local governments in enforcing immigration laws;
- Authorization of \$1 billion annually, subject to available appropriations, for the State Criminal Alien Assistance Program (SCAAP) after the current SCAAP authorization expires in Federal Fiscal Year (FFY) 2011; and

- A requirement that state and local governments authorize their law enforcement officers to assist with Federal immigration law enforcement in the course of carrying out their routine law enforcement duties as a condition for receipt of SCAAP funds.

The Board adopted policies relating to the CLEAR Act to oppose proposals that would require local law enforcement officers to enforce immigration laws, and support proposals that would “make Federal reimbursement of undocumented criminal alien incarceration costs contingent on state and local cooperation in identifying deportable criminal aliens in their custody and also provide for full Federal reimbursement of the costs of incarcerating inmates whose immigration status was not verified prior to their release from state or local custody.” **Based on these policies, the provision in H.R. 4437 that would require states and localities to enforce immigration laws in order to receive SCAAP funds is not consistent with County policy.** However, based on the policy supporting increased SCAAP funding in the Federal Agenda adopted by your Board on February 8, 2005, **the provision authorizing \$1 billion a year in SCAAP funding beginning in FFY 2012 is consistent with Board policy.**

The bill authorizes increased funding to expand the Institutional Removal Program (IRP) through which deportable criminal alien inmates are identified and removed from the country after completing their sentences. It also requires states, which receive SCAAP funds, to cooperate with Federal IRP staff in identifying criminal aliens, and authorizes states and localities to hold deportable inmates for up to 14 days after they complete their sentences to effectuate their transfer to Federal custody. **Increased funding to expand the IRP is consistent with the County policy adopted in the Federal Agenda of February 8, 2005 supporting increased funding for Federal immigration agents assigned to the County’s jails. The bill’s provision to make receipt of SCAAP funding contingent on state and local cooperation in identifying deportable criminal aliens also is consistent with the policy adopted by your Board on October 21, 2003.**

County Impact

It is difficult to estimate the bill’s impact on the County mainly because the legislation authorizes, rather than appropriates, increased funding for immigration enforcement activities and programs, such as SCAAP. Congress typically appropriates less funding for programs in its annual appropriations bills than authorized under existing law. Because SCAAP historically has been underfunded in annual appropriations bills, it would not be surprising if SCAAP were funded at a level below the \$1 billion authorized in FFY 2012 under the bill. The FFY 2006 SCAAP appropriation of \$401 million is far below the authorized level of \$750 million.

Legislative Outlook

Prior to House passage of H.R. 4437 in December 2005, the Bush Administration conveyed its strong support for the bill while also expressing some concerns with the bill especially its lack of a foreign temporary (guest worker) program. This month, the Senate Judiciary Committee had been marking up its version of immigration legislation. Today, the Committee completed its action on the bill in time for Senate floor action on immigration that is scheduled to begin on March 28, 2006. Last week, Senator Majority Leader Frist (R-TN) indicated that he would use S. 2454, an immigration enforcement bill which he recently introduced, as the legislative vehicle for floor action if the Judiciary Committee did not report its version. The Committee-passed bill is not yet available in print.

One of the biggest obstacles to the enactment of any immigration legislation this year is the issue of guest workers and whether undocumented immigrants currently in the U.S. should be allowed to remain in the country legally, either on a temporary or permanent basis. Even among Members of Congress from both parties who support a guest worker program, there is not a strong consensus on key issues, such as the scope of the program and whether it should lead to a path in which undocumented immigrants already in the country can legally stay in the country on an extended or permanent basis.

The outlook for Senate floor action on immigration legislation, therefore, is highly uncertain. Many observers, including the County's Washington advocates, believe that the enactment of major immigration reform legislation is unlikely this year given the lack of consensus within the Republican majority, election year politics, and the short legislative calendar. It also is noteworthy that it took Congress six years to enact the Immigration Reform and Control Act of 1986, the most recently enacted immigration reform bill. As previously indicated, taking a position on H.R. 4437 is a matter for Board policy determination because there are not any County policies on the vast majority of the bill's provisions.

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